

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

J.P., and all others similarly  
situated, c/o Children's Law  
Center, Inc., et al.,

Plaintiffs,

vs.

Civil Action 2:04-CV-692  
Judge Marbley  
Magistrate Judge King

BOB TAFT, in his official  
capacity only, et al.,

Defendants.

OPINION AND ORDER

This is a civil rights action under 42 U.S.C. §1983 in which plaintiffs allege that they have been denied their right of access to the courts under the First and Fourteenth Amendments by reason of defendants' alleged denial of access to counsel. Defendants have filed motions for summary judgment, Doc. Nos. 24, 25, arguing that plaintiffs lack standing to pursue this action and have failed to exhaust their administrative remedies required by the Prison Litigation Reform Act, 42 U.S.C. §1997e(a) ["PLRA"].

On March 7, 2005, plaintiffs filed a motion for leave to amend the complaint and tendered the proposed amended complaint. Doc. No. 41. Defendants oppose that motion.

In their proposed amended complaint, plaintiffs seek to name additional plaintiffs and to clarify certain allegations. Defendants oppose the motion on the basis that, as amended, the complaint cannot survive a motion for summary judgment.

Leave to amend the complaint, ordinarily to be freely granted, F.R. Civ. P. Rule 15(a), may be denied if the pleading, even as amended,

does not state a claim upon which relief could be granted. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). This Court is unable to conclude, in light of the pendency of the motions for summary judgment, to conclude that the requested amendments would be futile. Accordingly, plaintiffs' motion for leave to file an amended complaint, Doc. No. 41, is **GRANTED**.

**The Clerk shall file the amended complaint attached to the Motion for Leave to Amend.**

The pending motions for summary judgment will be deemed to apply to the amended complaint.

May 17, 2005

s/Norah McCann King  
Norah M°Cann King  
United States Magistrate Judge